ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 72

[FRL–5186–3]

RIN 2060–AE59

Acid Rain Program: Permits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: Title IV of the Clean Air Act (the Act), as amended by the Clean Air Act Amendments of 1990, authorizes the Environmental Protection Agency (EPA or Agency) to establish the Acid Rain Program. The program sets emissions limitations to reduce acidic deposition and its serious, adverse effects on natural resources, ecosystems, materials, visibility, and public health. On January 11, 1993, the Agency promulgated final rules under title IV. Several parties filed petitions for review of the rules. On January 10, 1995, EPA and the parties signed a settlement agreement addressing reduced utilization issues.

Based on a review of the record, the Agency concludes that the January 11, 1993 regulations concerning reduced utilization should be revised. The overall effect of the revisions is to reduce the reporting and recordkeeping burden on utilities. The regulations require that, unless certain requirements are met, the designated representative of a unit in Phase I of the program whose annual utilization of fuel is less than its average annual utilization in 1985–1987 must submit a reduced utilization plan. The regulations also require designated representatives to submit end-of-year compliance reports that estimate the sulfur dioxide emissions resulting from any underutilization of Phase I units and to surrender allowances for the estimated emissions. The Agency is revising the regulations to simplify the criteria for determining if a reduced utilization plan must be submitted: Where the end-of-year reporting and allowance surrender requirements are met, such a plan is not required. Further, the Agency is revising the formulas for estimating emissions resulting from underutilization to correct errors, clarify certain provisions, and take account of and facilitate compliance by Phase I units with multiple owners or whose owners are required by law to purchase electricity from non-utility power production facilities.

The rule revision is being issued as a direct final rule because it is consistent with the January 10, 1995 settlement and no adverse comment is expected.

EFFECTIVE DATE: This direct final rule will be effective on May 22, 1995 unless significant, adverse comments are received by May 11, 1995. If significant, adverse comments are timely received on any portion of the direct final rule, that portion of the direct final rule will be withdrawn through a notice in the **Federal Register**.

ADDRESSES: All written comments must be identified with the appropriate docket number and must be submitted in duplicate to: EPA Air Docket Section (LE–131), Waterside Mall, Room 1500, 1st floor, 401 M St., S.W., Washington DC 20460.

Docket No. A–93–40, containing supporting information used to develop the proposal, copies of all comments received, and responses to comments, is available for public inspection and copying from 8:30 a.m. to 12:00 p.m. and 1:00 p.m. to 3:30 p.m., Monday through Friday, excluding legal holidays, at EPA's Air Docket Section, Waterside Mall, Room 1500, 1st floor, 401 M St., S.W., Washington, DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Dwight C. Alpern, Attorney-advisor, at (202) 233–9151, Acid Rain Division (6204J), U.S. Environmental Protection Agency, 401 M St., S.W., Washington, DC 20460, or the Acid Rain Hotline at (202) 233–9620.

SUPPLEMENTARY INFORMATION: All public comment received on any portion of this direct final rule on which significant, adverse comments are timely received will be addressed in a subsequent final rule. That final rule will be based on the relevant portion of the rule revision that is noticed as a proposed rule in the Proposed Rules Section of this **Federal Register** and that is identical to this direct final rule. The contents of the preamble to the direct final rule are as follows:

I. Background: Purposes of Reduced Utilization Plans and Allowance Surrender for Underutilization of Phase I Units

A Phase I unit is underutilized if, in any year in Phase I, the total annual utilization of fuel at the unit is less than its baseline, i.e., its annual average fuel utilization for 1985–1987. The provisions of the Act that relate to reduced utilization or underutilization of Phase I units are found in sections 403(d) and 408(c)(1)(B).

In dividing the Acid Rain Program into two phases, i.e., Phase I applicable only to larger, dirtier units and Phase II applicable to virtually all utility units, the Congress recognized the potential for circumvention of Phase I emission reduction requirements. A Phase I unit, which receives allowances for its baseline, could simply reduce its utilization below baseline by shifting generation of electricity to a unit that was not covered by Phase I and did not have to use allowances to authorize its SO_2 emissions. The Phase I unit would retain the unused allowances but the same amount of SO_2 could be emitted by the second unit, which would not use up any allowances. See 58 FR 60951 (Nov. 18, 1993). In section 408(c)(1)(B), Congress adopted the solution of requiring submission of a reduced utilization plan by owners and operators of any Phase I unit that plans to reduce the unit's utilization in order to comply with Phase I emissions limitations. The plan must designate the units (referred to as ''compensating units'') to which generation was shifted or account for the reduced utilization through energy conservation or improved unit efficiency. 59 FR 60219 (Nov. 22, 1994).

Section 403(d) provides that the Acid Rain regulations must permit utilities to continue to operate in an economic and reliable fashion (e.g., through central dispatching that may result in shifting generation from Phase I units to other units or generators). However, section 403(d) also provides that the Acid Rain regulations must require utilities to compensate at the end of the year for emissions resulting from such operations and must facilitate orderly and competitive functioning of the allowance system. 56 FR 63019 (Dec. 3, 1991).

In order to achieve the objectives of both section 403(d) and section 408(c)(1)(B), EPA adopted, in the January 11, 1993 regulations, requirements concerning the submission of reduced utilization plans and allowance surrender for underutilization. The regulations

require that the designated representative of any Phase I unit with utilization below baseline apply formulas in §§ 72.91 and 72.92 estimating the emissions (if any) resulting from such underutilization and surrender allowances covering the estimated emissions. In this way, the emissions consequences of shifting generation from Phase I units are accounted for, and Phase I SO_2 emission reduction goals are preserved, without the designation of specific compensating units.

In addition, the January 11, 1993 regulations require the submission of a reduced utilization plan for any Phase I unit that is planned to be utilized below baseline as a method of complying with SO_2 emissions limitations. However, if the allowance surrender requirements are met and the unit meets criteria in § 72.43(e), a plan is not required. The criteria are broadly drawn. For example, under these criteria, a plan need not be submitted for underutilization caused by economic dispatching that reflected increases in generation costs (e.g., allowance costs) at the unit. The Agency adopted this approach of limiting the plan submission requirement because of concern that, *inter alia*, economic dispatch and operation of utility systems or power pools might be inhibited because utilities might be unable to designate compensating units. 56 FR 63021.

II. Reduced Utilization Plans

As noted above, § 72.43(e) of the January 11, 1993 regulations sets forth criteria for making retrospective determinations as to whether a Phase I unit was underutilized for the purpose of complying with SO_2 emissions limitations. If underutilization was for the purpose of compliance, then the unit must have a reduced utilization plan. If underutilization was incidental to utility operations, no plan is needed. In particular, a plan is not required if the allowance surrender requirements under §§ 72.91 and 72.92 are met and one of several demonstrations are made. The demonstrations involve showing that the unit's underutilization was caused by a dispatch-system-wide sales decline, a forced outage at the unit, or economic dispatching. If none of these demonstrations can be made, the Agency determines on a case-by-case basis, considering certain indicators set forth in § 72.43(e)(2), whether a plan should have been submitted.

The Agency has concluded that this approach is unnecessarily complicated and burdensome. Because of concerns that Phase I units would be unable to designate compensating units, the criteria in § 72.43(e) for avoiding submission of a reduced utilization plan were designed to apply broadly. In particular, a plan is not required to the extent underutilization is caused by economic dispatching. Consequently, under these criteria, plan submission is largely optional so long as the allowance surrender requirements are met.

However, despite their broad scope, the criteria still leave some uncertainty as to whether the Agency will agree that a reduced utilization plan is not required even if allowances are surrendered. Further, owners and operators of Phase I units carry the burden of showing that the criteria are met. In fact, the January 11, 1993 regulations require Phase I unit owners and operators to show in their annual compliance certification reports the amounts of underutilization caused by sales decline, forced outage, or economic dispatching. 40 CFR 72.92(a)(2) (1993). The annual reports must also include specified information on forced outages at Phase I units. 40 CFR 72.92(a)(3) (1993). Additional submissions are required during the year in the event of a forced outage that will permanently shut down a Phase I unit and result in shifting generation to other units. 40 CFR 72.92(b)(1) (1993). Yet, this uncertainty and burden serve no real purpose if the allowance surrender requirements of §§ 72.91 and 72.92 are met. The allowance surrender procedures account for the emissions consequences of underutilization and consequent shifting of generation and therefore obviate the need for a reduced utilization plan under section 408(c)(1)(B) of the Act. Once underutilization is accounted for under §§ 72.91 and 72.92, there is no basis for requiring any further accounting through the designation of compensating units or energy conservation or unit efficiency measures.

The Agency concludes that § 72.43(e) should be revised so that the requirement to submit a reduced utilization plan for an underutilized Phase I unit is eliminated if the allowance surrender and reporting requirements of §§ 72.91 and 72.92 are met. This is a reasonable way of harmonizing sections 408(c)(1)(B) and 403(d) of the Act. The other criteria in § 72.43(e) are therefore superfluous and are removed. Sections 72.92(a)(2) and (3) and (b)(1) of the January 11, 1993 regulations, requiring submission of information in annual and other reports related to the removed criteria in § 72.43(e), are also unnecessary and are removed.[1]

III. Dispatch System

The dispatch system of a unit plays an important role in the allowance surrender calculations under §§ 72.91 and 72.92. For example, if a Phase I unit has a reduced utilization plan, the amount of reduced utilization accounted for under the plan (by a compensating unit, conservation or improved unit efficiency measures, or sulfur-free generators) must be determined. See 40 CFR 72.91(a)(3) (1993) (requiring calculation of ''plan reductions''). The percentage change in the total sales of the dispatch system is a factor in calculating reduced utilization accounted for by a sulfur-free generator. 40 CFR 72.91(a)(3)(iii) (1993). As a further example, the total generation produced by the units and generators in a dispatch system during a Phase I calendar year must be used to determine the percentage of total dispatch system sales for the year that was generated by units and generators in the dispatch system. That percentage is used in calculating the emissions rate that is in turn used to determine how many allowances must be surrendered for the year. 40 CFR 72.92(c)(2)(v)(A) (1993).

The Agency is revising § 72.33(a), (b), and (c) to clarify certain matters concerning the determination of a unit's dispatch system. In addition, while § 72.33(f) allowed owners and operators of Phase I units to request that a Phase I unit be apportioned among its owners and their dispatch systems, certain revisions of the provision are needed to make it more workable and to coordinate it with the allowance surrender procedures under §§ 72.91 and 72.92.

A. Utility System and Identification of Dispatch System

Under § 72.33, each Phase I unit must be treated as part of a dispatch system for purposes of the allowance surrender procedures,[2] and the unit's utility

[1] In addition, § 72.91(a) of the January 11, 1993 regulations is revised to make it clear that the reporting requirements in § 72.91 apply only to calendar years in Phase I. Since § 72.92(a) applies to calendar years covered by § 72.91, this limitation applies to reporting under both sections. This reflects the fact that reduced utilization is a problem only in Phase I, when a minority of utility units are subject to Acid Rain SO_2 emissions limitations. See 56 FR 63018 and 58 FR 3605.

[2] Because the allowance surrender procedures are found in both § 72.91 and § 72.92, § 72.33(a) is revised to refer to both sections. The same change is made, for the same reason, in § 72.33(c)(4) and (e)(2) and § 72.33(f)(2) (iv) and (v). This conforms

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system (as defined in § 72.2) is its dispatch system unless a complete identification of dispatch system including that unit is submitted under § 72.33.

In the January 11, 1993 regulations, utility system is defined as all interconnected units and generators controlled by the same utility operating company, as reported in the National Allowance Data Base (NADB). The difficulty with this definition is that the NADB was published in final form in March 1993 and necessarily reflects information on utility systems as of that time. The Agency recognizes that the owners and operators of some units have changed since 1993 and, particularly in light of increased competition in the electric utility industry, that more changes may occur during Phase I. In order to clarify that designated representatives may submit identifications of dispatch system to correct the utility system in which a unit or generator is listed in the NADB and that is used as its dispatch system, the Agency is revising the utility-system definition. Section 72.2 now defines utility system as all interconnected units and generators operated by the same utility company and does not refer to the NADB. Section 72.33(e)(1) is revised to state that unless otherwise provided in an identification of dispatch system, a unit or generator included in the NADB retains, as its dispatch system, the utility system reported in the NADB.

The NADB lists one utility operating company for each Phase I unit, Phase II unit, and non-affected unit in the database. Section 72.33(b)(2) of the January 11, 1993 regulations states that, except as provided under § 72.33(f), no Phase I unit may be listed in more than one identification of dispatch system. Although § 72.33(b) of the January 11, 1993 regulations does not state explicitly that other units or generators also must be confined to a single identification of dispatch system, other provisions of the regulations reflect such a limitation. For example, § 72.33(f) states that, except for the provisions for apportioning Phase I units under § 72.33(f), all provisions of the regulations ''applicable to an affected source or affected unit * * * apply to the entire unit.'' 40 CFR 72.33(f)(6) (1993). By further example, the provisions requiring calculation of the ''total'' generation of the units and generators in a dispatch system are based on entire units and generators and do not provide for division of a unit's or generator's generation among more than one dispatch system, except for Phase I units apportioned under § 72.33(f). 40 CFR 72.92(c)(2)(v)(A) (1993). See also 40 CFR 72.91(a)(3)(iii)(A) (1993) (''actual annual'' generation of the sulfur-free generator). In addition, dispatch system emissions rate, which is calculated using the actual annual emissions rate of all Phase II units in the dispatch system, is based on the utilization of entire units, and there is no provision allowing apportionment of Phase II units. 40 CFR 72.92(c)(2)(v)(C) (1993).

In order to remove any possible uncertainty concerning the treatment of Phase II units, non-affected units, and generators (including sulfur-free generators and, as discussed below, non-utility generators), the Agency is revising § 72.33(b)(2) to state that, with one exception, a unit or generator can be included in only one dispatch system.[3] The only exception is provided in § 72.33(f), under which a petition to apportion a Phase I unit among two or more dispatch systems may be submitted and approved. Section 72.33(f) provides that, if the petition is approved, the portions of the Phase I unit will be treated as separate units under §§ 72.91 and 72.92, the allowance surrender provisions.

Several other revisions are made here to the provisions concerning identification of dispatch system. While the January 11, 1993 regulations require a complete identification of dispatch system to include a list of all units and sulfur-free generators in the dispatch system, the revised rule expands that list to include all generators, including sulfur-free generators and non-utility generators. The January 11, 1993 regulations also require that if the submissions under §§ 72.91 and 72.92 by all designated representatives of the units in the identified dispatch system do not conform to the system-wide data provided for the dispatch system, the Administrator must reject the identification of dispatch system and all the submissions and require resubmission using the utility system of each unit as that unit's dispatch system. The revised regulations make such rejection optional so that the Agency may instead require corrections of the submissions and allow the identification of dispatch system to remain in effect. Sections 72.33(c)(4) and (e)(2) are revised to implement that change. Finally, § 72.33(b)(3) is revised so that the deadline for providing an identification of dispatch system is the same as for providing a petition to apportion a Phase I unit under § 72.33(f)(1), i.e., submission to EPA by January 30 of the year that the dispatch system is to take effect.

B. Apportionment of Phase I Units

The January 11, 1993 regulations only allow for the apportionment of Phase I units, and such apportionment is only for the purpose of applying the allowance surrender procedures of §§ 72.91 and 72.92. Under § 72.33(f) of the January 11, 1993 regulations, Phase I units with multiple owners may petition to divide up the unit, for allowance surrender, into portions, i.e., one or more individual owners' portions representing the owners' respective percentage ownership interests in the capacity of the unit and the remaining portion of the unit. The petition requests that each individual owner's portion be treated as part of a dispatch system different than the dispatch system of the remaining portion. If the petition is approved, the adjusted utilization (which, if greater than zero, is underutilization) is calculated for the entire unit for the Phase I year governed by the approved petition, and each portion of the unit takes its percentage of the adjusted utilization reflecting the ownership percentage that the portion of the unit represents. Each portion of the unit then uses its share of the entire unit's adjusted utilization in calculating how many allowances (if any) must be surrendered for underutilization of the Phase I units in its respective dispatch system.

The Agency received public comment expressing concern that requiring the portions of a Phase I unit to divide among them the adjusted utilization calculated for the entire unit fails to reflect differences among the Phase I unit owners' respective utilizations of their shares of the unit. While during the Phase I year one owner might take generation representing more than its percentage share of the baseline of the entire unit, another owner might take generation representing less than its percentage share.

Section 72.33(f) is revised to require the separate calculation of adjusted utilization under § 72.91 for each portion of the unit for which a petition to apportion is approved and for the remaining portion of the unit. This

these provisions with other provisions in the January 11, 1993 regulations that cite both sections.

[3] The units and generators included in a given dispatch system under § 72.33(b) or (e) may be changed under § 72.33(d). A complete identification of dispatch system, reflecting the change, must be submitted for both the dispatch system from which the units or generators are removed and the dispatch system to which the units or generators are added. If the entire dispatch system from which the units or generators are removed is included in the dispatch system to which they are added, then an identification of dispatch system is necessary only for the latter dispatch system.

approach meets the commenters' concerns. The separate calculation of adjusted utilization is made a uniform requirement for all apportioned Phase I units in order to ensure that overall there is no net adverse environmental impact from apportionment and to avoid the potential confusion and administrative burden of having two entirely different approaches for calculating reduced utilization of apportioned units.

Public comment has also been directed at the requirement that apportionment be based exclusively on the owners' percentage ownership interest in the capacity of the Phase I unit. According to commenters, unit owners in some cases have entered into private agreements to divide up the allowances allocated to the unit based on percentage ownership of capacity during 1985–1987 while owners in other cases have agreed to divide up allocated allowances based on each owner's percentage share of utilization of the unit during 1985–1987. Commenters have requested that the regulations allow the basis for unit apportionment for purposes of allowance surrender to be consistent with the basis for dividing up the unit's allowance allocation.

The Agency is willing to meet these concerns and accommodate underlying private agreements among unit owners so long as the resulting regulatory provisions are not too complex and do not appear to cause overall any net adverse environmental impact. This is consistent with the Agency's general approach of avoiding interfering with existing relationships among owners and operators. See 58 FR 3598. Consequently, the revised § 72.33(f) allows the designated representative to elect in the apportionment petition one of two methods for apportioning the Phase I unit: the first method is based on the average of the owner's percentage ownership of the capacity of the unit for each year in 1985–1987; and the second method is based on the average of the unit's annual utilization that is attributed to the owner for 1985–1987. In order to avoid gaming by changing the apportionment method to minimize allowance surrender each year, the regulations make the selection of the apportionment method a one-time election for each Phase I unit. The same apportionment method must be used for all portions of the units for all years in Phase I for which any petition to apportion is approved and in effect.

Further, the Agency is concerned that, whichever apportionment method is elected, the baselines and actual utilizations for the portions of the unit must not double-count or undercount any of the baseline and actual utilization for the entire unit. Consequently, the revised regulations require that the sum of the baselines of the portions of the unit (including the individual owners' portions and the remaining portion of the unit) equal 100% of the baseline of the entire unit. Similarly, for each Phase I year, the sum of the actual utilizations of the portions must equal 100% of the entire unit's actual utilization. In order to ensure that the attribution of a unit's utilization (whether baseline or actual utilization) to specific owners is not arbitrary, the regulations require that the same accounting procedures used to attribute the unit's fuel costs among the owners be used for attributing utilization. This is reasonable because fuel costs at a unit are directly related to the unit's utilization (i.e., the mmBtu of fuel consumed).

The revised § 72.33(f) establishes the requirements for the contents of a complete petition to apportion and provides that the Administrator may prescribe a format. In addition to the requirements in the January 11, 1993 regulations, the petition must include the election of apportionment method and a list of the units and generators and apportioned units to be included in the dispatch system proposed for each portion of the unit covered by the petition. The designated representative is not required to submit with the petition the documentation supporting the baselines for the portions of the unit or the dispatch systems proposed for each portion of the unit. The Agency maintains that this is a sound approach in light of: the certifications by the designated representatives that the information in the petition is true, accurate, and complete; the Agency's ability to require submission of additional information before acting on the petition or at any other time; and the potential for after-the-fact spot audits.

The January 11, 1993 regulations require that, with regard to the dispatch system proposed for each owner's portion of the unit, the dispatch system must be a group of all units and generators that are interconnected and centrally dispatched and that are included in the same utility system, holding company, or power pool. The difficulty with this requirement is that a Phase I unit to be apportioned has multiple owners and only one owner may be the operator. A non-operating owner's portion of the unit cannot be in the ''utility system'' of the non-operating owner's other units and generators because, as defined in § 72.2, only units and generators with the same operator comprise a ''utility system''. In order to avoid this problem, the revised regulations require that the proposed dispatch system for each owner's portion of the unit include all units and generators that are interconnected and centrally dispatched by a single utility system, the service company of a single holding company, or a single power pool.

Upon approval of an apportionment petition and the proposed dispatch systems, the allowance surrender formulas are applied to each portion of the Phase I unit and its respective dispatch system. The designated representative of the apportioned unit must surrender all allowances required for surrender by each portion of the unit.

There is no provision in the January 11, 1993 regulations for termination of an approved apportionment of a Phase I unit. The Agency is concerned that after approval of an apportioned Phase I unit, circumstances may change so that the apportionment is no longer appropriate. For example, the owner of one portion of the apportioned unit could sell its entire interest in the unit and stop dispatching that portion of the unit. The dispatch system that, because of the approved apportionment, includes that portion of the unit would now include a portion of the unit that was no longer centrally dispatched along with the other units and generators in the dispatch system. That aspect of the approved apportionment (and the designated representative's certification concerning the continued central dispatching of the dispatch system) would no longer be accurate and the apportionment should be terminated. Of course, a new apportionment reflecting the new composition of ownership interests in the Phase I unit could be submitted for approval. Even without any change in ownership or dispatching, the owners of the Phase I unit might determine that an apportionment is no longer desirable. To accommodate changes in circumstance and to provide owners more flexibility, the revised regulations include a procedure for terminating apportionments. If a notice of termination is signed by the designated representatives of all units that could be affected by the termination (i.e., of all units included in all dispatch systems that include any portion of the unit) and submitted by January 30, the apportionment is terminated for that year and all remaining Phase I years.

IV. Emissions Rate

The January 11, 1993 regulations require that the emissions consequences

of underutilization for a dispatch system be estimated for each Phase I year by multiplying that underutilization (referred to as ''dispatch system adjusted utilization'') by an emissions rate for generation used by the dispatch system to compensate for the underutilization. The emissions rate is composed of an emissions rate for compensating generation produced by non-Phase I units and generators within the dispatch system and another emissions rate for compensating generation produced outside the dispatch system by non-Phase I, non-foreign units and generators and acquired by the dispatch system. To calculate the composite emissions rate, the emissions rate for generation within the dispatch system is weighted by a fraction equal to total generation by the units and generators in the dispatch system divided by total dispatch system sales (i.e., total sales for direct use or resale) of the named utility system, holding company, or power pool that is the dispatch system) for the year. The actual annual emissions rates of the Phase II units in the dispatch system are used as a proxy for the actual emissions rates of all non-Phase I units and generators in the dispatch system. Similarly, the emissions rate for generation outside the dispatch system is weighted by the fraction of total dispatch system sales that is accounted for by generation outside the dispatch system. NERC region emissions rates for non-Phase I, non-foreign units for 1985 are used as a proxy for the current emissions rates of non-Phase I, non-foreign units and generators.

In light of public comment concerning compensating generation from non-utility generators, the calculation of the emissions rate of non-Phase I units in the dispatch system, and 1985 NERC emissions rates, the Agency is revising these aspects of the January 11, 1993 regulations.

A. Non-Utility Generators

The Agency received public comment that some utilities are required by Federal or State law or by order of their State public utility commission to purchase electricity from non-utility generators. This required purchase of electricity may result in reduced utilization of the utility's own Phase I units. Since non-utility generators may have a different—apparently often lower—emissions rate than that of the utility's Phase II units or the NERC region emissions rate, the commenters urged that the formulas in § 72.92 be revised to take account of this third possible source of compensating generation.

The allowance surrender procedures in §§ 72.91 and 72.92 are not intended to result in a precise calculation of the emissions consequences of underutilization of Phase I units. The procedures were adopted to provide an administratively feasible method of developing reasonable estimates of the emissions resulting from generation compensating for underutilization. In light of this goal, the January 11, 1993 regulations establish a composite emissions rate based on two general categories of compensating generation. Because some utilities are obligated by law to purchase non-utility generation that may force them to reduce generation at their own units and because non-utility generators tend to have relatively low SO_2 emissions, the Agency is revising the regulations to take account of non-utility generation. This change increases somewhat the complexity of the allowance surrender formulas but, as a practical matter, only utilities that must buy from non-utility generators are affected by the change. While the Agency maintains that, on balance, the change is reasonable, the Agency stresses that the allowance surrender formulas are only intended to estimate emissions and that any more refinements that would further complicate the formulas would seem to be counterproductive.

The provisions incorporating non-utility generators into the allowance surrender procedures are premised on the fact that utilities acquiring non-utility generation have very limited information about the non-utility generators. Utilities contract to purchase non-utility generation but, as a result of not owning or operating these generators, have little or no knowledge about the fuels used by, and the heat rates and emission rates of, the generators. The Agency similarly has limited information about non-utility generators because they are not affected units. Consequently, the revised regulations use the available information on these generators (i.e., their emissions limitations and Kwh sales to utilities) to estimate emissions from compensating generation acquired from them.

In order to be treated as a non-utility generator, a power production facility cannot be an affected unit or a sulfur-free generator. The facility must use its most stringent federally enforceable or State enforceable SO_2 emissions limitation for the Phase I year as the estimate of its actual emissions rate.[4] With one exception, if no unit-specific limitation that can be expressed in lbs/mmBtu is applicable to the facility for the year, then the facility cannot be treated as a non-utility generator for that year. The only exception is where a facility without an emissions limitation is authorized by law to use only natural gas as fuel; in that case the most stringent emissions limitation for the facility is deemed to be 0.0006 lbs/mmBtu.[5]

As discussed above, the January 11, 1993 regulations calculate a composite emissions rate for a dispatch system reflecting compensating generation from within or from outside the dispatch system. The revised regulations introduce a third category, non-utility generation from non-utility generators, which equals the total generation acquired from non-utility generators that the dispatch system is required to purchase by Federal or State law or order of a utility regulatory commission or under a contract awarded as the result of a power purchase solicitation required by Federal or State law or utility regulatory commission order. To prevent double-counting, such generation is excluded in calculating the fractions of dispatch system sales accounted for by generation within or outside the dispatch system. Total non-utility generation from non-utility generators is used to calculate the fraction of dispatch system sales accounted for by such generators.

The non-utility generator average emissions rate is calculated using the most stringent emissions limitation (or for natural-gas-only facilities, the default emissions rate) for each non-utility generator from which the dispatch system was required to purchase electricity, weighted by the amount (kwh) of required electricity purchases during the year. The fraction of generation from non-utility generators and the non-utility generator average emissions rate are used, along with the comparable data for generation within and outside the dispatch system, to derive the composite emissions rate multiplied by the underutilization for the dispatch system for the year.[6] This yields the total number of allowances

[4] If emissions limitations vary depending on the fuel used, the most stringent emissions limitation must be calculated for each fuel used. The resulting limitation with the highest lbs/mmBtu must be used as the estimate for the actual emissions rate of the non-utility generator.

[5] This default emissions rate is the average SO_2 emissions rate for natural gas and was used for purposes of allocating allowances to utility units under section 405 of the Act. See Compilation of Air Pollutant Emission Factors (AP–42), Vol. 1 at 1.4–1 through 1.4–3, US EPA (4th ed. 1985).

[6] The dispatch-system-wide data related to non-utility generators must be included in the dispatch system data report under § 72.92(b).

that must be surrendered by Phase I units in the dispatch system.

B. Dispatch System Emissions Rate

The January 11, 1993 regulations use the actual annual emissions rate for a dispatch system's Phase II units to estimate the emissions rate for the dispatch system's non-Phase I units. In the December 3, 1991 proposed regulations, the Agency proposed to weight the actual annual emissions rate for each Phase II unit by the amount of the Phase II unit's increase in utilization for the year over baseline. 56 FR 63147–48 (Dec. 3, 1991). The January 11, 1993 regulations adopted a simpler approach of weighting actual annual emissions rates by each Phase II unit's total utilization for the year. 58 FR 3685.

However, the Agency has received public comments suggesting that weighting by the increase over baseline provides a more realistic estimate. It seems reasonable to treat a utilization reduction since 1985–1987 of one unit in a dispatch system as being compensated for by a utilization increase since 1985–1987 of another unit in that dispatch system. Further, this approach is similar to that taken with regard to sulfur-free generators. Compensating generation claimed to be acquired from sulfur-free generators under a reduced utilization plan cannot exceed the amount of electricity produced by the sulfur-free generator in excess of the average annual amount produced by the generator in 1985–1987. See 58 FR 3682. For these reasons, the Agency is revising the provisions for calculating dispatch system emissions rate to weight Phase II units' actual emissions rates by each unit's increased utilization over baseline. However, the Agency recognizes that it is possible that no Phase II unit in a dispatch system has increased utilization over baseline. In that case, non-affected units are providing the compensating generation but, because of the lack of emissions data from such units, the Phase II unit emissions rate must still be used as a proxy for non-affected units' emissions rates. The revised regulations therefore provide that if no Phase II unit is used above baseline, an average rate must be calculated using the Phase II units' annual actual emissions rates weighted by each unit's total utilization. Moreover, if a dispatch system has no Phase II unit emissions rate for the year, the NERC region emissions data will be used instead.

C. NERC Region Emissions Rate

The January 11, 1993 regulations use 1985 NERC data to establish the non-Phase I, non-foreign emissions rate for each NERC region. The 1985 emissions rate for units in the NERC region is multiplied by the fraction of non-Phase I, nonforeign units in the NERC region in order to exclude generation and resulting emissions from Phase I units and all foreign units and generators.

The Agency has learned through public comment that the figures in the regulations for the fraction of non-Phase I, non-foreign generation contained inadvertent errors and failed to actually exclude foreign generation. The Agency has recalculated the fractions of non-Phase I, non-foreign generation for each NERC region. Table 1 of the revised regulations includes the corrected figures so that foreign generation is excluded as intended.[7]

VI. Administrative Requirements

A. Executive Order 12866

Under Executive Order 12866, 58 FR 51735 (Oct. 4, 1993), the Administrator must determine whether the regulatory action is ''significant'' and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is a ''significant regulatory action'' because the rule seems to raise novel legal or policy issues. As such, this action was submitted to OMB for review. Any written comments from OMB to EPA, any written EPA response to those comments, and any changes made in response to OMB suggestions or recommendations are included in the docket. The docket is available for public inspection at the EPA's Air Docket Section, which is listed in the **ADDRESSES** section of this preamble.

B. Unfunded Mandates Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act'') (signed into law on March 22, 1995) requires that the Agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in expenditure by State, local, and tribal governments, in aggregate, or by the private sector, of $100 million or more in any one year. Section 203 requires the Agency to establish a plan for obtaining input from and informing, educating, and advising any small governments that may be significantly or uniquely affected by the rule.

Under section 205 of the Unfunded Mandates Act, the Agency must identify and consider a reasonable number of regulatory alternatives before promulgating a rule for which a budgetary impact statement must be prepared. The Agency must select from those alternatives the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule, unless the Agency explains why this alternative is not selected or the selection of this alternative is inconsistent with law.

Because this direct final rule is estimated to result in the expenditure by State, local, and tribal governments or the private sector of less than $100 million in any one year, the Agency has not prepared a budgetary impact statement or specifically addressed the selection of the least costly, most cost-effective, or least burdensome alternative. Because small governments will not be significantly or uniquely affected by this rule, the Agency is not required to develop a plan with regard to small governments. However, as discussed in this preamble, the rule has the net effect of reducing the burden of part 72 of the Acid Rain regulations on regulated entities, including both investor-owned and municipal utilities.

C. Paperwork Reduction Act

The information collection requirements in this rule have been approved by OMB under the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.*, and have been assigned control number 2060–0258.

[7] The definition of ''sulfur-free generation'' is revised to make it clear that only facilities in the 48 contiguous states in the United States or the District of Columbia may qualify as sulfur-free generators under reduced utilization plans. All foreign generation (including foreign generation that involves no SO_2 emissions) that offset underutilization is already excluded from allowance surrender in the revised Table 1. Allowing foreign facilities to be designated as sulfur-free generators and the generation acquired from them to be used to offset underutilization would double-count such generation.

This collection of information reduces the estimated burden, as compared to the burden under the January 11, 1993 regulations, by an average of 35 hours per response for about 110 responses. These estimates include time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. An Information Collection Request document and estimates of the public reporting burden were prepared in connection with the January 11, 1993 regulations. 56 FR 63098; 58 FR 3650.

Send comments regarding this burden analysis or any other aspect of this collection of information, including suggestions for reducing the burden, to Chief, Information Policy Branch, EPA, 401 M Street, SW. (Mail Code 2136), Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked ''Attention: Desk Officer for EPA.''

D. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, requires each federal agency to consider potential impacts of its regulations on small business ''entities.'' Under 5 U.S.C. 604(a), an agency issuing a notice of proposed rulemaking must prepare and make available for public comment a regulatory flexibility analysis. Such an analysis is not required if the head of an agency certifies that a rule will not have a significant economic impact on a substantial number of small entities, pursuant to 5 U.S.C. 605(b).

In the preamble of the January 11, 1993 regulations, the Administrator certified that those regulations, including the provisions revised by today's final rule, would not have a significant impact. 58 FR 3649. The final rule revisions adopted today are not significant enough to change the economic impact addressed in the January 11, 1993 preamble. Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that the revised rule will not have a significant, adverse impact on a substantial number of small entities.

E. Miscellaneous

In accordance with section 117 of the Act, issuance of this rule was preceded by consultation with any appropriate advisory committees, independent experts, and federal departments and agencies.

List of Subjects in 40 CFR Part 72

Environmental protection, Acid rain program, Air pollution control, Compliance plans, Electric utilities, Permits, Reporting and recordkeeping requirements, Sulfur dioxide.

Dated: March 31, 1995.

Carol M. Browner,

Administrator, U.S. Environmental Protection Agency.

For the reasons set forth in the preamble, chapter I of title 40 of the Code of Federal Regulations is amended as follows.

PART 72—[AMENDED]

1. The authority citation for part 72 continues to read as follows:

Authority: 42 U.S.C. 7601 and 7651, *et seq.*

2. Section 72.2 is amended by revising the definitions for ''sulfur-free generation'' and ''utility system'' to read as follows:

§ 72.2 Definitions.

* * * * *

Sulfur-free generation means the generation of electricity by a process that does not have any emissions of sulfur dioxide, including hydroelectric, nuclear, solar, or wind generation. A ''sulfur-free generator'' is a generator that is located in one of the 48 contiguous States or the District of Columbia and produces ''sulfur-free generation.''

* * * * *

Utility system means all interconnected units and generators operated by the same utility operating company.

* * * * *

3. Section 72.33 is amended by revising paragraphs (a), (b)(2), (b)(3), (c)(2), (c)(4), (e), and (f) to read as follows:

§ 72.33 Identification of dispatch system.

(a) Every Phase I unit shall be treated as part of a dispatch system for purposes of §§ 72.91 and 72.92 in accordance with this section.

(b) * * *

(2) Except as provided in paragraph (f) of this section, each unit or generator may be included in only one dispatch system.

(3) Any identification of dispatch system must be submitted by January 30 of the first year for which the identification is to be in effect.

(c) * * *

(2) The list of all units and generators (including sulfur-free generators) in the dispatch system.

* * * * *

(4) The following statement: ''I certify that, except as otherwise required under a petition as approved under 40 CFR 72.33(f), the units and generators listed herein are and will continue to be interconnected and centrally dispatched, and will be treated as a dispatch system under 40 CFR 72.91 and 72.92, during the period that this identification of dispatch system is in effect. During such period, all information concerning these units and generators and contained in any submissions under 40 CFR 72.91 and 72.92 by me and the other designated representatives of these units shall be consistent and shall conform with the data in the dispatch system data reports under 40 CFR 72.92(b). I am aware of, and will comply with, the requirements imposed under 40 CFR 72.33(e)(2).''

* * * * *

(e) (1) Any unit or generator not listed in a complete identification of dispatch system that is in effect shall treat its utility system as its dispatch system and, if such unit or generator is listed in the NADB, shall treat the utility system reported under the data field ''UTILNAME'' of the NADB as its utility system.

(2) During the period that the identification of dispatch system is in effect all information that concerns the units and generators in a given dispatch system and that is contained in any submissions under §§ 72.91 and 72.92 by designated representative of these units shall be consistent and shall conform with the data in the dispatch system data reports under § 72.92(b). If this requirement is not met, the Administrator may reject all such submissions and require the designated representatives to make the submissions under §§ 72.91 and 72.92 (including the dispatch system data report) treating the utility system of each unit or generator as its respective dispatch system and treating the identification of dispatch system as no longer in effect.

(f)(1) Notwithstanding paragraph (e)(1) of this section or any submission of an identification of dispatch system under paragraphs (b) or (d) of this section, the designated representative of a Phase I unit with two or more owners may petition the Administrator to treat, as the dispatch system for an owner's portion of the unit, the dispatch system of another unit.

(i) The owner's portion of the unit shall be based on one of the following apportionment methods:

(A) *Owner's share of the unit's capacity in 1985–1987.* Under this method, the baseline of the owner's portion of the unit shall equal the

baseline of the unit multiplied by the average of the owner's percentage ownership of the capacity of the unit for each year during 1985–1987. The actual utilization of the owner's portion of the unit for a year in Phase I shall equal the actual utilization of the unit for the year that is attributed to the owner.

(B) *Owner's share of the unit's baseline.* Under this method, the baseline of the owner's portion of the unit shall equal the average of the unit's annual utilization in 1985–1987 that is attributed to the owner. The actual utilization of the owner's portion of the unit for a year in Phase I shall equal the actual utilization of the unit for the year that is attributed to the owner.

(ii) The annual or actual utilization of a unit shall be attributed, under paragraph (f)(1)(i) of this section, to an owner of the unit using accounting procedures consistent with those used to determine the owner's share of the fuel costs in the operation of the unit during the period for which the annual or actual utilization is being attributed.

(iii) Upon submission of the petition, the designated representative may not change the election of the apportionment method or the baseline of the owner's portion of the unit.

The same apportionment method must be used for all portions of the unit for all years in Phase I for which any petition under paragraph (f)(1) of this section is approved and in effect.

(2) The petition under paragraph (f)(1) of this section shall be submitted by January 30 of the first year for which the dispatch system proposed in the petition will take effect, if approved. A complete petition shall include the following elements in a format prescribed by the Administrator:

(i) The election of the apportionment method under paragraph (f)(1)(i) of this section.

(ii) The baseline of the owner's portion of the unit and the baseline of any other owner's portion of the unit for which a petition under paragraph (f)(1) of this section has been approved or has been submitted (and not disapproved) and a demonstration that the sum of such baselines and the baseline of any remaining portion of the unit equals 100 percent of the baseline of the unit. The designated representative shall also submit, upon request, either:

(A) Where the unit is to be apportioned under paragraph (f)(1)(i)(A) of this section, documentation of the average of the owner's percentage ownership of the capacity of the unit for each year during 1985–1987; or

(B) Where the unit is to be apportioned under paragraph (f)(1)(i)(B) of this section, documentation showing the attribution of the unit's utilization in 1985, 1986, and 1987 among the portions of the unit and the calculation of the annual average utilization for 1985–1987 for the portions of the unit.

(iii) The name of the proposed dispatch system and a list of all units (including portions of units) and generators in that proposed dispatch system and, upon request, documentation demonstrating that the owner's portion of the unit, along with the other units in the proposed dispatch system, are a group of all units and generators that are interconnected and centrally dispatched by a single utility company, the service company of a single holding company, or a single power pool.

(iv) The following statement, signed by the designated representatives of all units in the proposed dispatch system: ''I certify that the units and generators in the dispatch system proposed in this petition are and will continue to be interconnected and centrally dispatched, and will be treated as a dispatch system under 40 CFR 72.91 and 72.92, during the period that this petition, as approved, is in effect.''

(v) The following statement, signed by the designated representatives of all units in all dispatch systems that will include any portion of the unit if the petition is approved: ''During the period that this petition, if approved, is in effect, all information that concerns the units and generators in any dispatch system including any portion of the unit apportioned under the petition and that is contained in any submissions under 40 CFR 72.91 and 72.92 by me and the other designated representatives of these units shall be consistent and shall conform to the data in the dispatch system data reports under 40 CFR 72.92(b). I am aware of, and will comply with, the requirements imposed under 40 CFR 72.33(f) (4) and (5).''

(3) (i) The Administrator will approve in whole, in part, or with changes or conditions, or deny the petition under paragraph (f)(1) of this section within 90 days of receipt of the petition. The Administrator will treat the petition, as changed or conditioned upon approval, as amending any identification of dispatch system that is submitted prior to the approval and includes any portion of the unit for which the petition is approved. Where any portion of a unit is not covered by an approved petition, that remaining portion of the unit shall continue to be part of the unit's dispatch system.

(ii) In approving the petition, the Administrator will determine, on a case-by-case basis, the proper calculation and treatment, for purposes of the reports required under §§ 72.91 and 72.92, of plan reductions and compensating generation provided to other units.

(4) The designated representative for the unit for which a petition is approved under paragraph (f)(3) of this section and the designated representatives of all other units included in all dispatch systems that include any portion of the unit shall submit all annual compliance certification reports, dispatch system data reports, and other reports required under §§ 72.91 and 72.92 treating, as a separate Phase I unit, each portion of the unit for which a petition is approved under paragraph (f)(3) of this section and the remaining portion of the unit. The reports shall include all required calculations and demonstrations, treating each such portion of the unit as a separate Phase I unit. Upon request, the designated representatives shall demonstrate that the data in all the reports under §§ 72.91 and 72.92 has been properly attributed or apportioned among the portions of the unit and the dispatch systems and that there is no undercounting or double-counting with regard to such data.

(i) The baseline of each portion of the unit for which a petition is approved shall be determined under paragraphs (f)(1) (i) and (ii) of this section. The baseline of the remaining portion of such unit shall equal the baseline of the unit less the sum of the baselines of any portions of the unit for which a petition is approved.

(ii) The actual utilization of each portion of the unit for which a petition is approved shall be determined under paragraphs (f)(l) (i) and (ii) of this section. The actual utilization of the remaining portion of such unit shall equal the actual utilization of the unit less the sum of the actual utilizations of any portions of the unit for which a petition is approved. Upon request, the designated representative of the unit shall demonstrate in the annual compliance certification report that the requirements concerning calculation of actual utilization under paragraph (f)(1)(ii) and any requirements established under paragraph (f)(3) of this section are met.

(iii) Except as provided in paragraph (f)(5) of this section, the designated representative shall surrender for deduction the number of allowances calculated using the formula in § 72.92(c) and treating, as a separate Phase I unit, each portion of unit for which a petition is approved under paragraph (f)(3) of this section and the remaining portion of the unit.

(5) In the event that the designated representatives fail to make all the proper attributions, apportionments,

calculations, and demonstrations under paragraph (f)(4) of this section and §§ 72.91 and 72.92, the Administrator may require that:

(i) All portions of the unit be treated as part of the dispatch system of the unit in accordance with paragraph (e)(1) of this paragraph and any identification of dispatch system submitted under paragraph (b) or (d) of this section;

(ii) The designated representatives make all submissions under §§ 72.91 and 72.92 (including the dispatch system data report), treating the entire unit as a single Phase I unit, in accordance with paragraph (e)(1) of this paragraph and any identification of dispatch system submitted under paragraph (b) or (d) of this section; and

(iii) The designated representative surrender for deduction the number of allowances calculated, consistent with the reports under paragraph (f)(5)(ii) of this section and §§ 72.91 and 72.92, using the formula in § 72.92(c) and treating the entire unit as a single Phase I unit.

(6) The designated representative may submit a notification to terminate an approved petition by January 30 of the first year for which the termination is to take effect. The notification must be signed and certified by the designated representatives of all units included in all dispatch systems that include any portion of the unit apportioned under the petition. Upon receipt of the notification meeting the requirements of the prior two sentences by the Administrator, the approved petition is no longer in effect for that year and the remaining years in Phase I and the designated representatives shall make all submissions under §§ 72.91 and 72.92 treating the petition as no longer in effect for all such years.

(7) Except as expressly provided in paragraphs (f)(1) through (6) of this section or the Administrator's approval of the petition, all provisions of the Acid Rain Program applicable to an affected source or an affected unit shall apply to the entire unit regardless of whether a petition has been submitted or approved, or reports have been submitted, under such paragraphs. Approval of a petition under such paragraphs shall not constitute a determination of the percentage ownership in a unit under any other provision of the Acid Rain Program and shall not change the liability of the owners and operators of an affected unit that has excess emissions under § 72.9(e).

4. Section 72.43 is amended by revising paragraph (e) to read as follows:

§ 72.43 Phase I reduced utilization plans.

* * * * *

(e) *Failure to Submit a Plan.* The designated representative of a Phase I unit will be deemed not to violate, during a Phase I calendar year, the requirement to submit a reduced utilization plan under paragraph (b)(1) or (4) of this section if the designated representative complies with the allowance surrender and other requirements of §§ 72.33, 72.91, and 72.92 of this chapter.

* * * * *

5. Section 72.91 is amended by revising the introductory language of paragraph (a) (the formula is unchanged) to read as follows:

§ 72.91 Phase I unit adjusted utilization.

(a) *Annual Compliance Certification Report.* The designated representative for each Phase I unit shall include in the annual compliance certification report the unit's adjusted utilization for the calendar year in Phase I covered by the report, calculated as follows:

* * * * *

6. Section 72.92 is amended by revising paragraphs (a), (b)(2)(ii)(F), (b)(2)(ii)(G), (b)(2)(ii)(H), (c)(2)(v) and Table 1, removing and reserving paragraph (b)(1), and adding paragraphs (b)(2)(ii)(I) and (b)(2)(ii)(J) to read as follows:

§ 72.92 Phase I unit allowance surrender.

(a) *Annual Compliance Certification Report.* If a Phase I unit's adjusted utilization for the calendar year in Phase I under § 72.91(a) is greater than zero, then the designated representative shall include in the annual compliance certification report the number of allowances that shall be surrendered for adjusted utilization using the formula in paragraph (c) of this section and the calculations that were performed to obtain that number.

(b) *Other Submissions.*

(1) [Reserved]

(2) * * *

(ii) * * *

(F) The calculation of ''dispatch system emissions rate'' under paragraph (c)(2)(v)(B) of this section;

(G) The calculation of ''fraction of generation from non-utility generators'' under paragraph (c)(2)(v)(C) of this section;

(H) The calculation of ''non-utility generator average emissions rate '' under paragraph (c)(2)(v)(F) of this section;

(I) A certification that each designated representative will use these figures, as appropriate, in its annual compliance certification report and will submit upon request the data supporting these calculations; and

(J) The signatures of all the designated representatives.

(c) * * *

(2) * * *

(v) *Calculating Emissions Rate.* ''Emissions rate'' (in lbs/mmBtu) is the weighted average emissions rate for sulfur dioxide of all units and generators, within and outside the dispatch system, that contributed to the dispatch system's electrical output for the year, calculated as follows:

Emissions rate = [fraction of generation within dispatch system × dispatch system emissions rate] + [fraction of generation from non-utility generators × non-utility generator average emissions rate] + [fraction of generation outside dispatch system × fraction of non-Phase 1 and non-foreign generation in NERC region × NERC region emissions rate]

Where:

(A) ''Fraction of generation within dispatch system'' is the fraction of the dispatch system's total sales accounted for by generation from units and generators within the dispatch system, other than generation from non-utility generators. This term equals the total generation (in Kwh) by all units and generators within the dispatch system for the calendar year minus the total non-utility generation from non-utility generators within the dispatch system for the calendar year and divided by the total sales (in Kwh) by the dispatch system for the calendar year.

(B) Dispatch system emissions rate'' is the weighted average rate (in lbs/mmBtu) for the dispatch system calculated as follows:

Dispatch system emissions rate =

$$\sum_{i=1}^{k} g_i \, r_i \div \sum_{i=1}^{k} g_i$$

Where:

g_i = the difference between a Phase II unit's actual utilization for the calendar year and that Phase II unit's baseline. If that difference is less than or equal to zero, then the difference shall be treated as zero only for purposes of paragraph (c)(2)(v) of this section and that unit will be excluded from the calculation of dispatch system emissions rate. Notwithstanding the prior sentence, if the actual utilization of each Phase II unit for the year is equal to or less than the baseline, then g_i shall equal a Phase II unit's actual utilization for the year. Notwithstanding any provision in this paragraph (c)(2)(v)(B) to the contrary, if the actual utilization of each Phase II unit in the dispatch system is zero or there are no Phase II units in the dispatch system, then the dispatch system emissions rate shall equal the fraction of non-Phase I and non-foreign generation in the NERC region multiplied by the NERC region emissions rate.

r_i = a Phase II unit's emissions rate (in lbs/mmBtu), determined in accordance with part 75 of this chapter, for the calendar year.

k = number of Phase II units in the dispatch system.

(C) ''Fraction of generation from non-utility generators'' is the fraction of the dispatch system's total sales accounted for by generation acquired from non-utility generators within or outside the dispatch system. This term equals the total non-utility generation from non-utility generators (within or outside the dispatch system) for the calendar year divided by the total sales (in Kwh) by the dispatch system for the calendar year.

(D) ''Non-utility generator'' is a power production facility (within or outside the dispatch system) that is not an affected unit or a sulfur-free generator and that has a ''non-utility generator emissions rate'' for the calendar year under paragraph (c)(2)(v)(F) of this section.

(E) ''Non-utility generation'' is the generation (in Kwh) that the dispatch system acquired from a non-utility generator during the calendar year as required by federal or State law or an order of a utility regulatory authority or under a contract awarded as the result of a power purchase solicitation required by federal or State law or an order of a utility regulatory authority.

(F) ''Non-utility generator average emissions rate'' is the weighted average rate (in lbs/mmBtu) for the non-utility generators calculated as follows:

Non-utility generator average emissions rate =

$$\sum_{i=1}^{n} N_i R_i \div \sum_{i=1}^{n} N_i$$

Where:

N_i = non-utility generation from a non-utility generator;

R_i = non-utility generator emissions rate for the calendar year for a non-utility generator, which shall equal the most stringent federally enforceable or State enforceable SO_2 emissions limitation applicable for the calendar year to such power production facility, as determined in accordance with paragraphs (c)(2)(v)(F) (*1*), (*2*), and (*3*) of this section; and

n = number of non-utility generators from which the dispatch system acquired non-utility generation. If n equals zero, then the non-utility generator average emissions rate shall be treated as zero only for purposes of paragraph (c)(2)(v) of this section.

(*1*) For purposes of determining the most stringent emissions limitation, applicable emissions limitations shall be converted to lbs/mmBtu in accordance with Appendix B of this part. If an applicable emissions limitation cannot be converted to a unit-specific limitation in lbs/mmBtu under appendix B of this part, then the limitation shall not be used in determining the most stringent emissions limitation. Where the power production facility is subject to different emissions limitations depending on the type of fuel it uses during the calendar year, the most stringent emissions limitation shall be determined separately with regard to each type of fuel and the resulting limitation with the highest amount of lbs/mmBtu shall be treated as the facility's most stringent federally enforceable or State enforceable emissions limitation.

(*2*) If there is no applicable emissions limitation that can be used in determining the most stringent emissions limitation under paragraph (c)(2)(v)(F)(*1*) of this section, then the power production facility has no non-utility generator emissions rate for purposes of paragraphs (c)(2)(v) (D) and (F) of this section and the generation from the facility shall be treated, for purposes of this paragraph (c)(2)(v) as generation from units and generators within the dispatch system if the facility is within the dispatch system or as generation from units and generators outside the dispatch system if the facility is outside the dispatch system.

(*3*) Notwithstanding paragraphs (c)(2)(v)(F) (*1*) and (*2*) of this section, if the power production facility is authorized under federal or State law to use only natural gas as fuel, then the most stringent emissions limitation for the facility for the calendar year shall be deemed to be 0.0006 lbs/mmBtu.

(G) ''Fraction of generation outside dispatch system'' = 1 − fraction of generation within dispatch system − fraction of generation from non-utility generators.

(H) ''Fraction of non-Phase I and non-foreign generation in NERC region'' is the portion of the NERC region's total sales generated by units and generators other than Phase I units or foreign sources in the unit's NERC region in 1985, as set forth in Table 1 of this section.

(I) ''NERC region emissions rate'' is the weighted average emission rate (in lbs/mmBtu) for the unit's NERC region in 1985, as set forth in Table 1 of this section.

TABLE 1.—NERC REGION GENERATION AND EMISSIONS RATE IN 1985

NERC region	Fraction of non-phase I and non-foreign generation in NERC region	NERC weighted average emissions rate (lbs/mmBtu)
WSCC	0.847	0.466
SPP	0.948	0.647
SERC	0.749	1.315
NPCC	0.423	1.058
MAPP	0.725	1.171
MAIN	0.682	1.495
MAAC	0.750	1.599
ERCOT	1.000	0.491
ECAR	0.549	1.564

[FR Doc. 95–8601 Filed 4–10–95; 8:45 am]

BILLING CODE 6560–50–P